IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 988 OF 1990

Dinkar Dhondi Salunkhe ... Petitioner

versus

1. Ramchandra Maruti Chavan
since deceased, per L.Rs.
A. Shrirang Ramchandra Chavan,
B. Hanmant Ramchandra Chavan,
D. Ratan Ramchandra Chavan,
2. Smt. Radhabai Rango Dawari,
since deceased, per L.Rs.
A. Shankar Vithu Dawari. ... Respondents

...

Mr. P.K. Ligade holding for Mr. S.P. Thorat, for the Petitioner.

Mr. Dilip Bodke, for the Respondent No. 1A and 1B.

Other Respondents served.

...

CORAM : A.M.KHANWILKAR,J.

20th July 2004

ORAL JUDGMENT :

1. This writ petition under Article 227 of the Constitution of India takes exception to the judgment and order passed by the Maharashtra Revenue Tribunal, Pune, dated June 25, 1989 in Revision No. MRT NS-VII/9/87(TNC.B.151/87). The land in question is agricultural land as has been found by the authorities below bearing Survey Nos. 174 and 175 (gut No. 920) admeasuring 2 acres 4 gunthas and 25 gunthas respectively. The lands were originally owned by one Rango Babaji Dawari, the predecessor of Respondent No. 1. After his death, his wife Smt.Radhabai Dawari, became the landlady of the suit land. The case of the Petitioner is that he was in exclusive cultivation of the suit land as tenant. The Petitioner had also filed suit for perpetual injunction against the Respondent No. 1, who claimed to be tenant along with other tenants in the suit land. That suit is decreed in favour of the Petitioner on March 20, 1989. The Civil Court has found that the Petitioner was in occupation of the suit lands. What is relevant for our purpose is that the Petitioner had also

filed application under section 70(b) of the Act for declaration that the original Respondent No. 1 was not tenant in the suit land. The tenancy authority after carefully examining the materials on record has kfound as of fact that the said Ramchandra Maruti Chavan was lawfully cultivating the suit land along with other tenants. In view of that finding, the application preferred by the Petitioner under section 70(b) of the Act came to be rejected by order dated August 231, 1978. Against that decision, the Petitioner carried the matter in appeal before the Sub-Divisional Officer, who, in turn, rejected the appeal by order dated October 20, 1986. The appellate authority reiterated the finding and conclusion reached by the first authority to hold that the original Respondent No. 1 was lawfully cultivating the suit land as tenant along with other tenants during the relevant period. Accordingly, the appeal was dismissed. The Petitioner carried the matter in revision before the Tribunal. Even the revisional authority by the impugned judgment and order has taken the same view as reached by the two authorities below. All the three authorities have analysed

the evidence on record to reach at the conclusion as referred to above. This concurrent view is the subject matter of challenge in this writ petition.

2. Having considered the rival submissions, I have no hesitation in taking the view that the writ petition is devoid of merits. The authorities below have adverted to the relevant materials on record before recording the finding in favour of the original Respondent No. 1. They have taken into account the mutation entry, which was duly certified and which had attained finality with regard to the suit lands. Besides, they have also adverted to the land revenue receipt as well as the crop share receipts produced on behalf of original Respondent No. 1. The authorities have also noted that the landlady admitted the claim of the Respondent No. 1 as tenant in the suit lands along with the other tenants. Taking overall view of the matter, the three authorities below have concurrently found as of fact that the original Respondent No. 1 was cultivating the suit lands as tenant since 1950-51. That being finding of fact will be

binding on this Court and it is not possible for this Court to reappreciate the evidence so as to take a different view, even if the Petitioner is able to show that the authorities below have committed some mistake here or there. That is not the scope of proceedings under Article 227 of the Constitution of India.

3. To overcome this position, the learned Counsel pressed into service decision of our High Court reported in Vol. XXV -No. 1 T.L.R. page 6 in the case of Dhondu Bapu Survey v. Aniruddh Yeshwant Vaidya, which has analysed the purport of section 4 of the Act. To my mind, this decision is of no avail to the Petitioner. In fact, the observations made in this judgment will enure to the benefit of the original Respondent No. 1. In other words, the finding of fact reached by the three authorities below that the original Respondent No. 1 was tenant in the suit lands deserves no interference. Hence, this writ petition fails. The same is dismissed. No order as to costs.

4. Parties to act on the authenticated copy

of this judgment.

(A.M.KHANWILKAR,J.)